

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of J.K., a person under	)	(Not For Official Publication)
eighteen years of age.	)	
_____	)	Case No. 20050737-CA
	)	
J.K.,	)	F I L E D
	)	(June 22, 2006)
Appellant,	)	
	)	2006 UT App 260
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 151032  
The Honorable Sharon P. McCully

Attorneys: Robert L. Donohoe, Salt Lake City, for Appellant  
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake  
City, for Appellee

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Before Judges Billings, McHugh, and Thorne.

McHUGH, Judge:

J.K. was adjudicated delinquent in juvenile court for criminal mischief, a class A misdemeanor if committed by an adult, see Utah Code Ann. § 76-6-106 (2003), and assault, a class B misdemeanor if committed by an adult, see id. § 76-5-102 (2003). On appeal, J.K. challenges the sufficiency of the evidence supporting his convictions. We affirm.

On a December afternoon in 2004, a BB<sup>1</sup> shot from a gun shattered a sliding glass door<sup>2</sup> at the Cottonwood Creek

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1. It is unclear from the record whether the gun used in the incidents in this case was a BB gun or a pellet gun. The probable cause statement makes reference to a pellet gun, while testifying witnesses refer to the shots as coming from a BB gun. For convenience, we refer to the gun that was used as a BB gun and the gun's ammunition as BBs.

2. The record refers to both a sliding glass door and a window. We take these terms to have been used interchangeably because a  
(continued...)

Apartments. A short time later, a girl was shot twice with BBs, once in the leg and once in the buttocks. Several witnesses who saw J.K. in the area at the time said he was carrying a BB gun, pointing it at buildings and people, and firing it. J.K. was charged with the two counts, which were adjudicated in juvenile court on June 29, 2005. At the adjudication, J.K.'s mother and sister testified that J.K. could not have been the shooter because he was at home when the incidents occurred. The juvenile court nonetheless found the allegations to be true, stating,

[I]f you count up the people here, every single person who observed a boy with a gun on that date knows [J.K.], has seen him before, had no question whatsoever that he was there with a gun in his hand. . . .

The other thing we know is on that day the door window got shot and [the girl] got shot. And that within seconds of those events happening, people who were there saw [J.K.] with the gun in his hand.

. . . .

What I know is that his mom and his sister . . . say they're very sure it was that day and they know exactly where [J.K.] was around that time.

You have to understand that they are his mom and his sister, and six other people who know [J.K.] saw him somewhere else doing something else. And I'm very aware of the differences in the details of their description, but the major ones are very consistent. They know [J.K.]. He was there. These two shots happened. He was seen with the gun in his hand. And positively identified. And he owns such a gun. Given all of that, I have to find that these two allegations are true.

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2. (...continued)  
closed glass door is, essentially, a window. In this decision, we refer to the object that the BB hit and shattered as a sliding glass door.

When a challenge to the sufficiency of the evidence is raised, this court reviews the juvenile court's decision under the "clearly erroneous" standard. In re S.O., 2005 UT App 393, ¶12, 122 P.3d 686 (per curiam); see also In re S.L., 1999 UT App 390, ¶19, 995 P.2d 17. Under the clearly erroneous standard, we will set aside the juvenile court's decision only when that decision is "against the clear weight of the evidence, or if [we] otherwise reach[] a definite and firm conviction that a mistake has been made." In re S.L., 1999 UT App 390 at ¶20. "[W]e defer to the juvenile court because of its advantaged position with respect to the parties and the witnesses in assessing credibility and personalities." Id. (quotations and citations omitted). We afford wide latitude to the juvenile court "based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' special training, experience[,] and interest in this field and . . . devot[ed] . . . attention to such matters." In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680 (quotations and citations omitted) (second alteration in original). "In addition, a party challenging the juvenile court's findings must marshal the evidence in support of those findings, and then show that the marshaled evidence is insufficient, as a matter of law, to support the findings." In re S.L., 1999 UT App 390 at ¶20 (citation omitted).

J.K. has failed to meet his marshaling requirement. Instead, he reargues the credibility of the witnesses, essentially asking us to weigh the evidence anew. This is an unavailing tactic on appeal, see In re S.O., 2005 UT App 393 at ¶12, and we therefore reject J.K.'s contentions.

Even if we consider the substance of J.K.'s insufficiency arguments, we are not definitely and firmly convinced that "a mistake has been made." In re S.L., 1999 UT App 390 at ¶20. As stated by the juvenile court, six witnesses testified that they saw J.K. at the Cottonwood Creek Apartments on the day of the incidents. And although the witnesses' testimonies diverged on the details, the juvenile court found the testimonies to be in agreement on the essential points--that J.K. had the BB gun, was pointing it, and was shooting it near the apartment buildings around the same time that the sliding glass door and the girl were shot.

J.K. further argues on appeal that the juvenile court improperly disregarded the alibi testimony of his mother and sister. Again, we defer to the judgment of the juvenile court as

the finder of fact in assessing the credibility of the witnesses and weighing the testimony. See id.

Affirmed.

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Carolyn B. McHugh, Judge

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WE CONCUR:

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge